

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KAREN KRIEBEL : CIVIL ACTION  
:   
v. :   
:   
LARRY G. MASSANARI, Acting :   
Commissioner of Social Security : NO. 00-3357

MEMORANDUM ORDER

This is an appeal from a denial of social security disability benefits. The ALJ rendered her decision on April 21, 1998. She found that although plaintiff could not perform her past relevant work or a full range of light work, she had the capacity to perform some available jobs at a light exertional level. Plaintiff's request for review was denied by the Appeals Council on May 12, 2000 and its decision was subsequently adopted by the Commissioner.

The parties have filed cross-motions for summary judgment. The Magistrate Judge submitted a Report and Recommendation on May 3, 2001, concluding that the case should be remanded for further consideration, to which defendant has objected. The court will focus its discussion on the pertinent points in contention.

Since he was plaintiff's treating neurologist for almost a decade, Dr. Fredanes's opinion would ordinarily be accorded great weight. The ALJ rejected his opinion on disability for the stated reason that it was not consistent with

his contemporaneous treatment records. The ALJ cited treatment notes which suggest that plaintiff's migraine headaches responded to medication and a comment to Dr. Fredane by plaintiff, the mother of a young child, in October 1994 that she was "very active from early AM until late at night." The court agrees with the Magistrate Judge that the ALJ's consideration of the evidence appears to have been somewhat selective.

The medical records refer to "intractable migraines" spanning many years and note in 1997 that "after many years of trials of many different medications, we have not found anything that has ever come close to being an effective agent as a prophylaxis against her headaches." In the same 1997 report in which Dr. Fredane notes that Fiorinal with codeine was the only medication which had proved effective, he also states that "[e]ven the Fiorinal with codeine which she continues to take for the migraines doesn't seem to help." Also unmentioned was a March 1998 report that the migraine headaches "have gotten much worse" since the fall of 1997. The same treatment record which notes plaintiff's "very active" comment states that her migraines were "intractable," were "severe last week for 7 days" and prevented her from sleep for days at a time.

The ALJ rejected plaintiff's complaints of disabling pain. She concluded they were inconsistent with her medical

history and treatment, asserted ability to work and daily activities.

The record documents a long history of severe migraine pain and the trial of numerous medications in an effort to alleviate it. The ALJ correctly notes that plaintiff prepared a resume in 1993 which recited an interest in returning to employment as a medical assistant, a type of work she was indisputably unable to perform at the time of the hearing. The ALJ, however, did not discuss the evidence that plaintiff did return to work in March 1993 and had to leave within a month because of her condition.

The ALJ did not specify what activities plaintiff engaged in which were inconsistent with her claim of debilitating pain. Plaintiff testified that except on an occasional "good day," she does not do housework, cooking, cleaning or grocery shopping. She testified that she rarely goes out except to church on Sunday mornings and does not answer her door or telephone. There does not appear to be evidence to the contrary.

The ALJ also did not discuss the effects of medication plaintiff takes to address her pain. The medication which appears to be most effective, Fiorinal with codeine, contains a sedative barbiturate and is rather potent.

The Magistrate Judge correctly notes that the ALJ posed a hypothetical to the VE which did not encompass medical evidence

provided by plaintiff's treating neurologist, complaints of pain or effects of her pain medication. The ALJ also posed a second hypothetical which did reflect plaintiff's reported pain. In response to this hypothetical, however, the VE stated that such an individual "would not be able to sustain work activity."

The medical records do variously refer to a decrease in the frequency and intensity of the migraines on the one hand and to severe intractable migraines which have "gotten much worse" on the other hand. As noted, the same report which states that Fiorinal with codeine "works on a regular basis" also states that it "doesn't seem to help." An ALJ may recontact a treating physician to obtain clarification or to resolve ambiguities. A treating physician may also be able to provide valuable information about the effects of medication he has prescribed. The inclusion in a hypothetical of such information and the treating physician's opinion, as clarified, may produce a more reliable response from a VE. Plaintiff did on one occasion refer to being "very active" while otherwise stating that her activities were quite circumscribed. She was not asked if she could satisfactorily explain that apparent discrepancy.

The court concludes that the most fair and appropriate resolution of this matter is a remand to the Commissioner for reconsideration upon further proceedings to clarify and augment

the record with regard to those matters noted in the Report and Recommendation and amplified herein.

**ACCORDINGLY**, this                      day of May, 2001, upon consideration of the parties' cross-motions for summary judgment, the record presented, the Report and Recommendation of the U.S. Magistrate Judge, and defendant's objections thereto, **IT IS HEREBY ORDERED** that said the Report and Recommendation, as amplified herein, is **APPROVED and ADOPTED**; plaintiff's Motion for Summary Judgment is **DENIED**; defendant's Motion for Summary Judgment is **DENIED**; the decision of the Commissioner is **VACATED**; and, this case is **REMANDED** to the Commissioner for further proceedings and consideration consistent with the foregoing.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**